

HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

WILLIAM LAMBERT and DEBORAH  
LAMBERT,

Plaintiffs,

v.

BENEFICIAL MORTGAGE  
CORPORATION, a Delaware Corporation;  
TRANS UNION, LLC, a Delaware Limited  
Liability Company; and EQUIFAX  
INFORMATION SERVICES, LLC, a  
Georgia Limited Liability Corporation,

Defendants.

Case No. C05-5468 RBL

ORDER GRANTING PLAINTIFFS'  
MOTION FOR LEAVE TO WITHDRAW  
DEEMED ADMISSIONS

THIS MATTER is before the court on Plaintiffs' Motion for Leave to Withdraw Deemed Admissions to Defendant. [Dkt. # 17]. Plaintiffs request that the Court, pursuant to Federal Rule of Civil Procedure 36(b), withdraw the deemed admissions to Defendant Trans Union's Request for Admission served on Plaintiffs on January 30, 2006, and answered by Plaintiffs on May 22, 2006. Defendants asks that the Court deny the Motion. [Dkt. #18].

Failure to timely respond to Requests for Admissions results in automatic admission of the matters requested. Fed. R. Civ. P. 36(a). Any matter admitted pursuant to Rule 36 is "conclusively established unless the Court on motion permits withdrawal" of the admission. Fed. R. Civ. P. 36(b). Two requirements must be met before an admission may be withdrawn: 1) presentation of the merits of the action must be subserved, and 2) the party who obtained the admission must not be prejudiced by the withdrawal. *Hadley v. United*

1 *States*, 45 F.3d 1345, 1348 (9<sup>th</sup> Cir. 1995). Defendants assert that the deemed admission should not be  
2 withdrawn because Plaintiffs do not explain their failure to respond to requests and they do not attempt to  
3 show that any of the admissions are factually inaccurate. Plaintiffs, under Rule 36(b), are not required to show  
4 either good cause or that the admissions are factually wrong.

5 The first prong of the test asks if allowing the withdrawal will aid in resolution of the case. *Gallegos*  
6 *v. City of Los Angeles*, 308 U.S. 987, 993 (9<sup>th</sup> Cir. 2002). Upholding the admissions in this case would  
7 essentially eliminate all of the central issues in Plaintiffs' case against Trans Union. The law favors deciding  
8 disputes on the merits. *Franchise Holding II, LLC v. Huntington Restaurants Group, Inc.*, 375 F.3d 922, 924  
9 (9<sup>th</sup> Cir. 2004). Therefore, withdrawal of the admissions in this case would promote a presentation on the  
10 merits of the action and the first prong is satisfied.

11 The prejudice contemplated by Rule 36(b) relates to the difficulty a party may face in proving its case  
12 caused by the unavailability of key witnesses or the sudden need to obtain evidence with respect to questions  
13 previously deemed admitted *Gallegos*, 308 F.3d at 993. The burden of proving prejudice is on the party who  
14 obtained the admissions. *Hadley*, 45 F.3d at 1348. Defendants in this case assert that they will be substantially  
15 prejudiced if Plaintiffs are permitted to withdraw their admissions because of their reliance on those admissions  
16 during discovery. [Dkt. #18, 7]. Although Defendants thus far have not conducted the discovery they would  
17 have if Plaintiffs had timely responded to their requests, the Court will also be granting the Joint Motion for  
18 Continuance of Discovery [Dkt. #20], giving Defendants an opportunity to conduct the additional discovery  
19 needed to defend their case. Consequently, Defendants have not shown they will be prejudiced by the  
20 withdrawal of the deemed admissions and both prongs required for withdrawal of admissions under Rule 36(b)  
21 have been satisfied.

22 For the above stated reasons Plaintiffs' Motion for leave to withdraw deemed admissions to Defendant  
23 Trans Union, LLC. [Dkt. #17] is GRANTED. The Joint Motion for Continuance of Discovery [Dkt. #20] is  
24 also GRANTED. The clerk shall enter a revised scheduling order.

25 IT IS SO ORDERED.

26 DATED this 19<sup>th</sup> day of July, 2006

27   
28 RONALD B. LEIGHTON  
UNITED STATES DISTRICT JUDGE